IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3179 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

GOVINDBHAI HIRABHAI SOLANKI

Appearance:

1. Special Civil Application No. 3179 of 1989

MR PRANAV G DESAI for Petitioner No. 1

MS AMY YAJNIK for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 01/05/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Pranav G. Desai for the petitioner and Ms. Ami Yagnik for the respondent workman. By way of this petition, the petitioner has challenged the award made by the labour court, Ahmedabad

in Reference No. 566 of 1984 dated 4th October, 1988 wherein the labour court has set aside the order of termination dated 9th July, 1981 and has granted reinstatement and has directed to reinsert the name of the respondent in the Badli Wait List as a fresh employee and the relief of back wages for the intervening period has been denied by the labour court under the award in question. Initially, rule has been issued by this Court on 3.5.1989 and ad.interim relief in terms of para 12(C) has been granted. Thereafter, by order dated 17.12.1990, this Court has ordered that the name of the respondent workman will be continued on the list of badli workman subject to the result of the present petition.Therefore, in view of the interim order passed by this court on 17th December, 1990, the respondent must have been reinstated in service as badli employee and by now, he must have been regularized as a regular employee of the petitioner corporation.

Learned advocate Mr. Desai has submitted that the respondent was working as a badli workman and in view of the serious misconduct committed by him as a conductor on 23rd May, 1981 while he was on duty from Dhandhuka to Bagodara, his services were terminated and, therefore, in such a situation, the labour court ought not to have exercised the powers under sec. 11A of the Industrial Disputes Act, 1947 since the alleged misconduct was found to have been proved and further since the labour court has felt that this is a serious misconduct, it ought not to have exercised the powers under sec. 11A of the Act in favour of the workman.

I have considered the submissions made by Mr. Desai for the petitioner. The Labour Court has, after appreciating the evidence on record, come to the conclusion that the respondent has recovered fare from two passengers and not issued tickets. At the relevant time when his bus was checked, there were 26 passengers in the bus and at that time, cash of Rs.120.05 was found to be in excess and there was an amount of Rs.10.05 in excess than the amount written in the way bill with him which was considered to be serious misconduct and, therefore, the name of the respondent was deleted from the waiting list. However, the labour court has considered that the second party was not having two fingers on his right hand and one finger was half and has appreciated the say of the workman that in view of his handicap, he is consuming much time in issuing tickets and has also considered that it is an admitted fact that the workman is not having two fingers on his right hand and out of the remaining fingers, one finger is half and

in light of this handicap of the respondent, the labour court has considered the misconduct committed by the workman and was of the view that the punishment of deletion of his name from the waiting list of conductor is harsh and excessive and, therefore, in exercise of the powers under section 11-A of the Industrial Disputes Act, 1947, the labour court has set aside the order of deletion of the respondent's name from the waiting list of the conductor and has ordered the corporation to insert the respondent's name in such list as afresh employee and except this relief, no other reliefs were granted by the labour court in respect of back wages and continuity of service.

I have perused the award in question. The reasons given by the labour court for interfering with the punishment imposed by the competent authority is genuine and reasonable. The labour court has satisfied itself about the misconduct committed by the workman and has also appreciated the handicap suffered by the workman while deciding the reference that in view of such handicap, the respondent was not able to immediately issue the tickets after collecting fare from the passenger and therefore, it was found by the labour court that the punishment imposed by the competent authority is harsh and excessive and, therefore, it made the award in question in exercise of the powers under section 11-A of the Industrial Disputes Act. Further, this court has, by order dated 17.12.1990, directed the corporation to continue the name of the respondent as badli worker and more than twelve years have gone thereafter and by now, the workman must have been regularized in the petitioner and, therefore, in view of this situation, not it would not be just and proper to disturb the reinstatement of the respondent workman because otherwise, it will adversely affect the respondent and his family too. Mr. Desai has not made any submission about any subsequent misconduct committed by the workman after reinsertion of his name in the badli list pursuant to order dated 17.12.1990. In view of these facts, according to my opinion, the labour court has rightly exercised the powers under section 11-A of the Industrial Disputes Act and in doing so, the labour court has not committed any error which would require interference of this Court in exercise of the powers under Article 227 of the Constitution of India. No jurisdictional error and/or procedural irregularity has been pointed out by Mr. Desai. Hence there is no substance in this petition and this petition is, therefore, required to be rejected.

In view of the above discussion, this petition is

rejected. Rule is discharged. Interim relief, if any, shall stand vacated with no order as to costs.

1.5.2002. (H.K. Rathod,J.)

Vyas